

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Falcon Cable Systems Company II)	CUID No. CA0631 (City of Atascadero)
)	
Petition for Reconsideration)	

ORDER ON RECONSIDERATION

Adopted: March 5, 2002

Released: March 7, 2002

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 98-1672 ("Prior Order").¹ In our Prior Order, we resolved a complaint against the above-referenced operator's ("Operator's")² cable programming services tier ("CPST") rates in the above-referenced community. Operator also filed a refund plan in response to our Prior Order. In this Order, we grant Operator's Petition, modify our Prior Order and dismiss Operator's refund plan as moot.

2. Under the Communications Act,³ at the time the referenced complaint was filed, the Federal Communications Commission ("Commission") was authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992⁴ ("1992 Cable Act") required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act")⁵ and our rules implementing the legislation ("Interim Rules"),⁶ required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint.⁷ The filing of a complete and timely complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁸ The Operator has the burden of demonstrating that the CPST rates complained about are

¹ In the Matter of Falcon Cable System Company II, DA 98-1672, 13 FCC Rcd 18410 (1998).

² The term "Operator" includes Operator's successors and predecessors in interest.

³ Communications Act, Section 623(c), *as amended*, 47 U.S.C. §543(c) (1996).

⁴ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶ *See* Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996).

⁷ *See* Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c) (1996).

⁸ *See* Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

reasonable.⁹ If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.¹⁰

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹¹ Cable operators may justify rate increases on a quarterly basis using FCC Form 1210, based on the addition and deletion of channels, changes in certain external costs and inflation.¹² Operators may justify their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹³ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹⁴

4. In its Petition, Operator asserts that our Prior Order incorrectly identified Operator's actual CPST rate under review as \$8.01 when its actual CPST rate for the period under review was \$1.50. Our review of Operator's rate cards and supporting billing records confirms that Operator's actual CPST rate as of May 15, 1994 was \$1.50. In our Prior Order, we found Operator's FCC Form 1200 calculated maximum permitted rate ("MPR") of \$5.98 to be reasonable effective May 15, 1994.¹⁵ Because Operator's actual CPST rate of \$1.50 does not exceed its MPR of \$5.98, we find Operator's actual CPST rate of \$1.50 to be reasonable, effective May 15, 1994. Because our resolution of this issue disposes of Operator's refund liability, we will modify our Prior Order to exclude any refund liability. Therefore, we will grant Operator's Petition and dismiss Operator's refund plan as moot.

5. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106 that Operator's Petition for Reconsideration IS GRANTED TO THE EXTENT INDICATED HEREIN.

6. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that In the Matter of Falcon Cable Systems Company II, DA 98-1672, 13 FCC Rcd 18410 (1998), IS MODIFIED TO THE EXTENT INDICATED HEREIN.

⁹ *Id.*

¹⁰ See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

¹¹ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ In our Prior Order, we accepted Operator's request for refund liability deferral until July 15, 1994. However, if there is no refund liability as of May 15, 1994, based on the FCC Form 1200 MPR, then there is no need for deferral.

7. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that Operator's refund plan IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau